

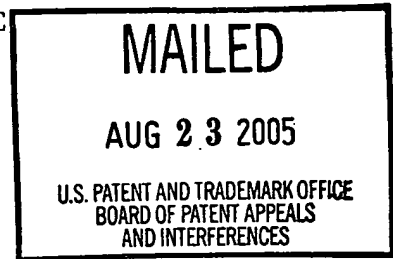
The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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Ex parte WILLIAM REX AKERS, JEFF W. CANTERBURY,  
BLAKE B. MILLER, CRAIG ALAN WALKER, JAMES R. KING,  
JERRY L. GRAVES, JAY TRAVIS PATTERSON, ROBERT J. NORMYLE,  
KEVIN P. HALE, BRANDON T. WATTS and KAREN D. RAU

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Application No. 09/851,745

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ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

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This application was electronically received at the Board of Patent Appeals and Interferences on June 3, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the examiner. The matters requiring attention prior to docketing are identified below.

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Appellant filed an Information Disclosure Statement (IDS) on February 3, 2003. It is not clear from the record whether or not this IDS has been considered or acknowledged. The examiner needs to consider the Information Disclosure Statement and acknowledge such consideration.

The Final Rejection, mailed January 2, 2003, rejects Claims 1-15 under 35 USC 103(a), and 50 under 35 USC 103(a) as being unpatentable over Evans (5,924,074) in view of McGauley et al. (5,899,998), Claims 16-17 and 35 under 35 USC 103(a), as being unpatentable over Evans, in view of Portwood et al. (6,305,377), Claims 18 is rejected under 35 USC 103(a), as being unpatentable over Evans, in view of Portwood et al. in further view of McGauley et al., Claims 23, 28-29, 30-31 and 33 under 35 USC 103(a), as being unpatentable over Evans, in view of McGauley et al., Claims 24 and 27 under 35 USC 102(b) as being anticipated by Evans, Claims 25-26 and 32 under 35 USC 103(a) over Evans and Claim 34 under 35 USC 103(a) over Evans and Portwood in view of Chudy (6,370,841).

The Appeal Brief filed July 11, 2003, appeals the examiner's Final Rejection mailed January 2, 2003

The Examiner's Answer dated March 9, 2004, rejects Claims 1-15 under 35 USC 103(a), and 50 under 35 USC 103(a) as being unpatentable over Evans (5,924,074) in view of McGauley et al. Claims 16-17, "19" and 35 under 35 USC 103(a), as being unpatentable over Evans, in view of Portwood et al. (6,305,377), Claims 18 is rejected under 35 USC 103(a), as being unpatentable over Evans, in view of Portwood et al. in further view of McGauley et al., Claims "20-22" under 35 USC 103(a) over Portwood in view of Evans, Claims 23, 28-29, 30-31 and 33 under 35 USC 103(a), as being unpatentable over Evans, in view of McGauley et al., Claims 24 and 27 under 35 USC 102(b) as being anticipated by Evans, Claims 25-26 and 32 under 35 USC 103(a) over Evans and Claim 34 under 35 USC 103(a) over Evans, and Portwood in view of Chudy (6,370,841).

In summary the rejection of Claim...19 under 35 USC 103(a), as being unpatentable over Evans, in view of Portwood et al. (6,305,377) and Claims 20-22 under 35 USC 103(a) over Portwood in view of Evans constitute new grounds of rejection in the Examiner's Answer mailed March 9, 2004.

Section 1208.01 of the Manual of Patent Examining Procedure (MPEP) (8th ed., Aug. 2001) states:

37 CFR § 1.193(a)(2) prohibits the entry of a new ground of rejection in an examiner's answer. At the time of preparing the answer to an appeal brief, however, the examiner may decide that he or she should apply a new ground of rejection against some or all of the appealed claims. In such an instance where a new ground of rejection is necessary, the examiner should reopen prosecution. The examiner must obtain supervisory approval in order to reopen prosecution after an appeal. See MPEP § 1002.02(d).

Accordingly, it is

**ORDERED** that the application is returned to the examiner for resolution of the following issues:

- 1) consideration and proper written response to the Information Disclosure Statement dated September 9, 1998;
- 2) vacate the Examiner's Answer dated March 9, 2004;
- 3) generate a supplemental Examiner's Answer clarifying the examiner's intention regarding the grounds of rejection; and
- 4) any further action as deemed appropriate

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It is important that the Board of Patent Appeals and Interferences be informed promptly of any action affecting the appeal (i.e. abandonment, issue, reopening prosecution).

BOARD OF PATENT APPEALS  
AND INTERFERENCES



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Application No. 09/851,745

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